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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 318

DI GIORGIO FRUIT CORPORATION, A CORPORATION, AND DI GIORGIO WINE COMPANY, A CORPORATION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 191-199) is not yet officially reported. The findings of fact, conclusions of law, and order (R. 174-179, 108-174) of the National Labor Relations Board are reported at 87 NLRB 720.

JURISDICTION

The decision and judgment of the court below were entered on June 21, 1951 (R. 191, 204). The petition for a writ of certiorari was filed on September 13, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether a union composed exclusively of agricultural laborers, who are denied the status of employees by Section 2 (3) of the Act and can receive no benefits under the Act, is a "labor organization" "in which *employees* participate" within the meaning of Section 2 (5) of the Act, so as to subject it to the restraints imposed upon such labor organizations by Section 8 (b) (4) (A) of the Act.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are set forth in the Appendix, *infra,* pp. 19-24.

STATEMENT

On a large ranch of about 11,000 acres known as Di Giorgio Farms (R. 116-117), Di Giorgio Fruit Corporation produces fruits and vegetables, employing about 1,500 agricultural workers in this operation (R. 122). The working force is composed, first, of harvest and field workers, irrigators, and packing shed workers, and second, of truck drivers and their helpers (R. 122).

In 1947 an attempt to organize the first group of workers was begun, resulting in the formation of Kern County Farm Labor Union, Local 218, herein called Farm Union, affiliated with National Farm Labor Union, AFL (R. 121, 122-123). The membership of Farm Union was composed exclusively of agricultural laborers of the Fruit Corporation employed in the fields and sheds (R. 121, 145). As a result of the organizational campaign, Farm Union claimed that more than 1,100 of Fruit Corporation's workers became members (R. 123).

About the same time, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, AFL, herein called the Teamsters, began to organize the truckers and helpers employed as agricultural laborers at Di Giorgio Farms, whom Farm Union did not seek to represent (R. 122-123). Teamsters claimed as members "almost the entire" group of these drivers and helpers (R. 123).

Farm Union and Teamsters requested Fruit Corporation to bargain collectively with them as representatives of the agricultural workers, but the demand for recognition was rejected (R. 123). Subsequently, because of the status of the workers as "agricultural laborers," the Board refused to process petitions for representation filed by the unions, and the General Counsel of the Board refused to issue a complaint against Fruit Corporation for refusing to bargain based on charges filed by the

unions (R. 125). Meanwhile, on October 1, 1947, the workers struck to compel recognition (R. 123). A joint picket line of Farm Union and Teamsters was established at each point where a private road from Di Giorgio Farms joined a public road (R. 123-124). In addition, on several occasions during the strike, members of Farm Union, but not Teamsters, followed truckloads of produce or cars of wine from Di Giorgio Farms to the plants of purchasers and there established picket lines, which employees of the purchasers declined to cross (R. 137-143).

In presently pertinent part, the complaint before the Board alleged that Farm Union violated Section 8 (b) (4) (A) of the Act by its activity at the premises of the purchasers (R. 110-111). The Board dismissed the complaint against Farm Union, holding that a union composed exclusively of agricultural laborers was not a labor organization in the statutory sense subject to the restraints of Section 8 (b) (4) (A) of the Act (R. 175, 179, 145-152). Upon petition to review the Board's dismissal of the complaint, the court below affirmed the Board (R. 193-197).

ARGUMENT

The Board held that a union composed exclusively of agricultural laborers, denied employee status by Section 2 (3) of the Act, was not a labor organization within the meaning of Section 2 (5)

of the Act, and was therefore not subject to the restraints imposed upon such organizations by Section 8 (b) (4) (A) of the Act. In reaching this conclusion the Board relied upon (1) the interrelated definitions of Section 2 (3) and (5) of the Act which expressly remove unions of agricultural workers from the statutory prohibitions placed on labor organizations; (2) the internal structure of Section 8 (b) of the Act, which is incompatible with an assumption that agricultural unions are within its regulatory scope; and (3) the over-all purpose of the Act, which was to create equality of correlative privileges and obligations (R. 175, 145-152). In affirming the Board, the court below observed that in these circumstances to give the term "labor organization" an "undefined meaning" in order to reach agricultural unions "would simply be rewriting the statute" (R. 196).

1. In six subsections, Section 8 (b) of the Act spells out the type of activity in which "It shall be an unfair labor practice for a labor organization or its agents" to engage. "When used in this Act," Section 2 (5) defines as a "labor organization" any organization "in which *employees* participate" (Italics added). Section 2 (3) excludes from its definition of "employee" "any individual employed as an agricultural laborer." By its terms, therefore, a union of agricultural laborers is not a "labor organization" for no "employees," in the statutory sense, participate in it. Such a

union is, accordingly, outside the scope of Section 8 (b) (4) (A) of the Act.

These definitions are obviously controlling, for they were devised for the express purpose of identifying the class of unions which Congress intended to subject to the regulation of Section 8 (b). Thus, Section 2 (3) of the Act was amended in 1947 to exclude from the term "employee" "any individual employed by an employer subject to the Railway Labor Act." Employers subject to the Railway Labor Act had never been covered by the National Labor Relations Act, since as originally enacted such carriers were excluded from the term "employer" by Section 2 (2). Therefore, the purpose of amending the definition of "employee" to exclude railway workers was not to establish the already existing immunity of carriers; its purpose was to "make it perfectly clear" that *railway unions* were not to be subjected to the regulations contained in the amended Act. S. Rep. No. 105, 80th Cong., 1st Sess., 19; 93 Cong. Rec. 6498. To accomplish this exemption of railway unions Congress chose the device of exempting railway workers from the term "employee." The reasonable inference to be drawn from the identical exemption of agricultural laborers is that their unions are similarly exempt.[1]

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[1] This appears to be the uniform conclusion of responsible commentators: Teller, *Labor Disputes and Collective Bargaining* (1950 Supp.), Sec. 398.33; Witney, *Agricultural Workers under National Labor Relations Laws*, Institute of Labor and

2. The internal structure of Section 8 (b) discloses that a labor organization of agricultural laborers is outside its scope. The term "a labor organization or its agents," in the preamble to all of Section 8 (b), is the single phrase which defines those unions which are subject to the prohibitions of the succeeding six unfair labor practices. By far most of these practices are by their terms incapable of application to a union of farm workers. Thus, with respect to the organizational activity of Farm Union among its members and their co-workers employed at Di Giorgio Farms, none of whom are "employees" because of their status as "agricultural laborers," Farm Union cannot, in violation of Section 8 (b) (1) (A), "restrain or coerce employees in the exercise of the rights guaranteed them in section 7." Agricultural laborers are guaranteed no rights under Section 7, and just as Fruit Corporation is not subject to the prohibitions against interference with them, neither is Farm Union. Nor, for the same reason, could Farm Union with respect to agricultural workers "cause

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Industrial Relations, University of Illinois Bulletin, March 1948, pp. 5, 29; Van Arkel, *An Analysis of the Labor Management Relations Act, 1947*, Practising Law Institute (1947), p. 2; Wollett, *Labor Relations and Federal Law* (1949) 33 (supervisors); see also Interim Report of Special Subcommittee of House Committee on Education and Labor to investigate labor practices in the food industry, 80th Cong., 2d Sess., Committee Rep. No. 8, p. 9: "While labor unions cannot, under the Taft-Hartley Act, file charges against farmers with the National Labor Relations Board, neither can farmers secure protection or redress from the Board or the courts when they are in jeopardy or have suffered damages."

an employer to discriminate against an employee" in violation of Section 8 (b) (2), just as Fruit Corporation cannot be held responsible for discrimination. So too, since it is not and cannot be "the representative of his employees subject to the provisions of section 9 (a)" (Section 8(b)(3)), Farm Union could not refuse to bargain collectively with Fruit Corporation in violation of Section 8 (b) (3), just as Fruit Corporation cannot be required to bargain with Farm Union. And, since its membership is composed solely of agricultural laborers, Farm Union could not violate Section 8 (b) (5) by requiring of "employees" the payment of an excessive or discriminatory initiation fee, as provided therein.

Accordingly, the internal inconsistencies revealed by an attempt to apply the restrictions of Section 8 (b) to Farm Union confirm the conclusion drawn from the definitions, namely, that a union composed exclusively of farm workers is exempt from Section 8 (b). Thus, apart from Section 8 (b) (4), the other unfair labor practices listed clearly have no application to a union of farm workers. Indeed, even as to Section 8 (b) (4), subsections (C) and (D) and the proviso are in terms incapable of reference to argicultural unions. Petitioners' contention must be, therefore, that with respect to 8 (b) (4) (A) and (B), but nothing else in 8 (b), the term "labor organization" in the preamble abruptly acquires a differ-

ent meaning for the purpose of embracing otherwise exempt farm unions. But there is nothing shown in the text or pattern of the statute to justify giving two meanings to the same term used in the same section for the same purpose of defining the coverage of a single, unified and related set of prohibitions. As the court below concluded (R. 197), "the section conferring benefits (Section 8 (a)) and the section imposing restrictions (Section 8 (b)), which are subdivisions of the same section of the Act, must be construed in harmony; and . . . if they be construed to apply to organizations of agricultural laborers, they would nullify the exclusion of such laborers from the statutory definition of 'employees'."

3. The exempt status of Farm Union is in harmony with the purpose underlying the amendments of the Act. The proponents of the 1947 amendments repeatedly stated their aim to be the establishment of an equality of rights and duties between labor unions and management.[2] Having in 1935 granted rights of self-organization and collective bargaining to employees and their organizations and imposed corresponding obligations upon employers, Congress in 1947 amended the Act to require the labor organizations to which it gave assistance to abstain from the activities which it found harmful and set out in Section 8 (b). As

[2] H. Rep. No. 245, 80th Cong., 1st Sess., 8, 31; S. Rep. No. 105, 80th Cong., 1st Sess., 2; 93 Cong. Rec. 3835, 4436. 4437, 6441.

it said in amending its "Findings and Policies" by the addition of the fourth paragraph to Section 1 of the Act:

> The elimination of such practices is a necessary *condition* to the assurance of the *rights* herein guaranteed. [Emphasis supplied.]

Thus, in consideration of its grant and protection of "rights" exercised by employees and their unions, Congress required such unions to fulfill the "conditions" of fair union conduct.

To subject agricultural laborers and their unions to the restraints of the amended Act, while at the same time denying them its assistance, runs into direct conflict with the Act's overall purpose of establishing equality between labor and management. In 1935, Congress excluded agricultural workers from the term "employee" so that such workers and their unions secured no benefits from the Act. To attain self-organization and collective bargaining they could look only to their economic power, and they achieved little success by this method.[3] In 1947, Congress left them exactly as they had been before. They still received no bene-

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[3] In relation to other workers protected by the NLRA, statistics graphically show both, (1) the lack of organizational growth of unions of farm workers denied statutory benefits, and (2) the consequent minute nature of any problem presented by their efforts to organize. In 1946, one year before the amendment of the NLRA, about "14.8 million workers were employed under conditions determined by written collective-bargaining agreements" and they represented "48 percent of the 31 million engaged in occupations in which the unions have been organizing and endeavoring to obtain written agreements." U. S. Dept. of Lab., Bur. of Lab. Stat., Bull.

fits from the Act, but they were likewise to be subjected to no curbs, in harmony with the overall purpose of the Act. Thus, as the court below observed (R. 197), "it seems indisputably clear that Congress did not intend to include within either the benefits or the restrictions of the Act organizations composed exclusively of agricultural laborers."

Indeed, to have subjected unions of farm workers to the prohibitions of Section 8 (b) (4) (A) would not merely have disrupted the equality of immunity which the Act contemplates; it would in fact have placed such unions in an inherently worse position than those labor organizations which are concededly subject to the Act. Labor organizations subject to the Act, which are certified as bargaining representatives, may have the aid of secondary pressure by other unions to enforce their demand to bargain (Section 8 (b) (4) (B) of the Act); unions of farm workers, since they are denied the opportunity of certification, can never have such assistance, as the facts of this case show (R. 162-166). Labor organizations subject to the Act, which are majority representatives of employees that the employer is required to recog-

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No. 909, *Extent of Collective Bargaining and Union Recognition 1946*, 1. Of the 31 million workers, about 2,148,000 were hired farm workers (U. S. Bur. of Cens., *Statistical Abstract of the United States: 1949*, (Seventieth Edition) Washington, D. C., 1949, 198), of whom less than 1 percent in 1946 worked under union agreements (U. S. Dept. of Lab., *op. cit.*, at 2 and n. 1). Thus, in contrast with the over-all average of 48 percent, less than 1 percent of farm workers were employed under union contracts.

nize, may have whatever immunity is granted by the proviso contained in Section 8 (b) (4); unions of farm workers, since they are never required to be recognized, can never enjoy the advantages of such immunity. It is hardly possible to attribute to Congress the purpose of placing unions of farm workers in such a permanently inferior position in their relationship to employers of agricultural labor, particularly where, as here, such employers engage as many as 1,500 workers in their operations.

4. Insofar as the purpose of Congress can be discerned from the legislative history, the explanation of Senator Taft,[4] the colloquy on the Senate floor,[5] and the testimony adduced at the hearings before the House and Senate committees,[6] show clearly that Congress was not concerned with the farmers' difficulty with the secondary boycotts of unions composed of agricultural laborers. Rather, its expressed concern was with secondary pressure by unions composed of handlers, truckers, processors and the like. Such handlers, truckers, and processors are unquestionably "employees" within the meaning of the Act, and their unions are unquestionably "labor organizations" now subject

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[4] 93 Cong. Rec. 4867.

[5] 93 Cong. Rec. 4860-4868.

[6] Hearings before the House Committee on Education and Labor, 80th Cong., 1st Sess., on Amendments to the National Labor Relations Act, pp. 719, 724, 1803, 1840, *et seq.*, 1912 *et seq.*; Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess., on Labor Relations Program, pp. 494 *et seq.*, 1636 *et seq.*, 1644 *et seq.*

to Section 8 (b) (4) (A). As the facts of this case show (R. 159-166), Fruit Corporation secured appropriate relief against secondary boycotts by unions of teamsters and wine workers, and the congressional purpose was thus fulfilled. But, as the court below observed (R. 195, 197), the fact that Congress drew a statute to protect the farmer against the secondary activity of nonagricultural unions hardly indicates that Congress intended to proscribe the activity of farm workers who are themselves denied statutory protection. In these circumstances, where Congress has not expressed an unmistakable policy preference capable of effectuation within the present statutory scheme, the court below concluded that the "ultimate problem whether secondary boycotts by agricultural laborers should be forbidden is for the Congress and not for the courts" (R. 197).

5. The decision below does not conflict with this Court's decision in *Phelps-Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, as the court below explained in detail in concluding that the *Phelps-Dodge* "opinion does not determine the problem now before us" (R. 195). In *Phelps-Dodge,* this Court held that the authority of the Board "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act," contained in Section 10 (c) of the Act, was not restricted to employees who have "not obtained any other regular and substantially equivalent

employment," a qualification appearing in the definition of the term "employee" in Section 2 (3) of the Act. This Court reasoned that, (1) the authority of the Board to order reinstatement of employees was not derived from and was not limited by the participial phrase "including reinstatement of employees with or without back pay" (313 U. S., at 191, 187-189); (2) the qualification pertaining to "equivalent employment" was not a "specific delimiting provision" of the general class of "employees" (313 U. S., at 192); and (3) to deny the Board power to order the reinstatement of employees who had obtained other employment would be destructive of the policy of the Act to neutralize discrimination (313 U. S., at 192-194).

The court below pointed out that "the same process of reasoning" does not apply "to the problem now before us" (R. 195). First, the exemption of agricultural laborers is a "specific delimiting provision" of the general class of "employees"; second, this specific delimitation appears in the "same section of the statute" defining "labor organization," and unlike the reinstatement provision, the relationship is not between "two different sections dealing with different topics" (R. 195); and third, unlike the policy of undoing discrimination by reinstatement, there is in this case no discernible statutory policy favoring prohibition of secondary activity by unions composed of agricultural laborers.

Accordingly, it hardly follows that because the term "employee" is used in an unrestricted sense in Section 10 (c) it is likewise unqualified when used in Section 2 (5) to define a labor organization in its relationship to Section 8 (b). *Phelps-Dodge* does not stand for the proposition that a statutory definition is inserted in a statute only to be ignored.[7] It is ordinarily the single most reliable guide to statutory meaning, and as applied in this case, its utilization is corroborated by text, context, and history.

6. There is no conflict between the decision below and the unreviewed portion of the decision of the Court of Appeals for the Fifth Circuit in *International Rice Milling Co.* v. *National Labor Relations Board,* 183 F. 2d 21, 24-26 (C. A. 5), upon which certiorari was not sought by the Board. *National Labor Relations Board* v. *International Rice Milling Co.,* 341 U. S. 665, 668, n. 2. In the unreviewed part of *International Rice,* unlike the present case, the offending union was unquestionably a "labor organization" within the meaning of the Act, and the only issue was whether railroad employees were "employees of any employer" within the meaning of Section 8 (b) (4) (A) and (B) of the Act whom such unions are forbidden to

[7] For example, petitioners would insist upon qualifying the term "employees" as used in Section 8 (a) of the Act by the exclusion of agricultural laborers set forth in the statutory definition. If the statutory definition suffices to deny agricultural laborers the benefits of the Act, by parity of reasoning it suffices to free them of its limitations.

induce to withhold services. In holding that they were, the Fifth Circuit reasoned that Congress had intentionally used the phrase "employees of *any* employer" in Section 8 (b) (4) in order to extend the sweep of that section beyond the limited definition accorded *an* "employer" in the Act. (183 F. 2d, at 25.) But of critical importance to the present question, the Fifth Circuit made clear that unions of railroad workers, themselves excluded from the Act, are not subjected to its restrictions. As the Court said (183 F. 2d, at 25): "There is no doubt that Congress intended to exclude railroad companies and their employees from the National Labor Relations Act in so far as the regulation of labor relations was concerned. * * * Section 8 (b) (4) of the National Labor Relations Act, as amended in 1947, as applied to this case, does not seek to enter the field of railway labor relations. Petitioners are not asking that anything be done to railroad companies or their employees, or that they be compelled to do anything."

Accordingly, the court below and the Fifth Circuit reached identical conclusions on the analogous issue of whether unions composed of workers excluded from the status of employees are subject to the Act, the court below holding that agricultural unions were exempt from regulation under the Act and the Fifth Circuit stating that railway unions were similarly exempt. Thus, far from being in conflict, the decision below is in accord with the decision of the Fifth Circuit. Petitioners im-

plicitly recognize this, for while claiming a conflict between the two decisions, they express dissatisfaction with the opinion of the Fifth Circuit. (Pet. 25.)

7. The insignificant incidence of strikes in agriculture from 1944 to 1950 shows the relative unimportance of the question presented. The inconsiderable number of work stoppages among farm workers is even more marked than the statistics show, for the available statistics pertain to "agriculture, forestry, fisheries, and related services," a much wider category than exclusively agricultural labor.[8] Furthermore, in comparison with industry generally, work stoppages in agriculture are minute indeed. The statistics show as follows:

Year	Number of Stoppages		Number of Workers Involved	
	Agriculture Forestry and Fishing	All Industry	Agriculture Forestry and Fishing	All Industry
1944[a]	18	4,956	9,851	2,115,637
1945[a]	20	4,750	5,000	3,467,000
1946[a]	28	4,985	17,500	4,600,000
1947[a]	22	3,693	12,200	2,170,000
1948[a]	23	3,419	23,100	1,960,000
1949[b]	24	3,606	18,300	3,030,000
1950[c]	12	4,843	20,700	2,410,000

[a] Bureau of the Census, U. S. Dept. of Commerce, *Statistical Abstract of the United States*, 1950, U. S. Gov't. Print. Off., Wash., D. C., 1950, p. 209, Table 252.

[b] U. S. Dept. of Labor, *Monthly Labor Review*, May, 1950, U. S. Gov't. Print. Off., Wash., D. C., 1950, p. 504, Table 4.

[c] U. S. Dept. of Labor, *Monthly Labor Review*, May, 1951, U. S. Gov't. Print. Off., Wash., D. C., 1951, p. 521, Table 4.

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[8] Bureau of the Budget, Executive Office of the President, *Standard Industrial Classification Manual*, Vol. II, U. S. Gov't. Print. Off., Wash., D. C., May, 1949, p. 7.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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OCTOBER, 1951.

APPENDIX

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

* * * * *

"DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent em-

ployment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring member-

ship in a labor organization as a condition of employment as authorized in section 8 (a) (3).

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his

representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organiza-

tion has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organiza-

tions in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

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